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OFFICE OF GENERAL

August 4, 2017

Federal Election Commission
Office of Complaints Examination and Legal Administration
Attn: Donna Rawls, Paralegal
999 E Street, N.W.
Washington, D.C. 20463

FEC MAIL CENTER

RE: Response in MUR 7183

To Whom It May Concern:

The Thornton Law Firm ("the Firm"), Michael Thornton, Amy Thornton, Garrett Bradley, and David Strouss (collectively "the Respondents" in the above-referenced matter) respectfully submit this Supplemental Response to the Federal Election Commission ("the Commission") letters dated November 7, 2016 and November 22, 2016. This Response is intended to supplement the Respondents' May 30, 2017 Response. The Respondents submit the information in this Supplemental Response pursuant to Federal Rules of Evidence 408 and 410.

The Respondents' May 30, 2017 letter focused on refuting the factual allegations made in the November 2, 2016 complaint filed against the Respondents by the Campaign Legal Center and Sandhya Bathija. In particular, the Respondents' May 30 letter highlighted how, after using a personal check or personal credit card to make a political contribution, the equity partners received corresponding draws from their own individual capital accounts. Today's letter provides additional legal framework that further demonstrates that the Respondents acted legally and in a manner consistent with established FEC guidelines.

I. Because the Equity Partners Made Draws From Their Own Capital Accounts for Political Contributions, Their Contributions Should Not Be "Dual-Attributed" to the Partnership

The Respondents emphasize that their political contributions were their own and not the Thornton Law Firm's. Under federal law, partnerships may make political contributions, and such contributions will be dual-attributed to both the partnership and to the individual partners. 11 C.F.R. § 110.1(e). However, the Commission has recognized that in certain circumstances, individual partners may fund political contributions using an account maintained at the

<sup>&</sup>lt;sup>1</sup> The Thornton Law Firm, Michael Thornton, Garrett Bradley, and David Strouss received letters from the FEC dated November 7, 2016. Amy Thornton received a letter from the FEC dated November 22, 2016.

partnership and those contributions will be attributed only to the individual partners and not to the partnership. For example, in AO 1982-63, the law firm Manatt, Phelps, Rothenberg & Tunney ("Manatt") sought an opinion from the Commission as to whether noncorporate partners of Manatt could "authorize the Firm to withhold a specified amount from their share of Firm profits and to transfer said amount directly to the [firm's] PAC." *Id.* at 1. In approving this system, the FEC stated that the "noncorporate partners in making a PAC contribution through the system would be required to take a deduction in their share of Firm profits, or an increase in their share of Firm losses, which is in direct proportion to their interest in partnership profits or which is determined according to some other agreement of the partners." *Id.* at 3. AO 1982-63 conveys the critical principles that (1) individual partners can pay for their own political contributions using an account maintained by the partnership as long as there is a reduction in their individual profit allocation and (2) individual partners can make such political contributions without having them also attributed to the partnership.

Whether an individual partner's contribution will be attributed only to the individual partner depends on the amount of control and discretion that the individual partner has over the funds. In AO 1984-10, the law firm Arnold & Porter sought approval of a plan whereby contributions

would be made by checks drawn on the general partnership account used by the firm for its day-to-day operations. Individual partners are not authorized to issue checks drawn on this account to pay personal expenses . . . The amount of any contribution made in the name of a participating partner would be charged against his or her personal firm account and equivalent sum would be deducted from the partner's subsequent quarterly income distribution. The plan does not involve use of personal checks by participating partners.

Id. at 1.

The Commission ultimately did not approve of Arnold & Porter's proposed plan because, while individual partners of a partnership that is a federal contractor may make contributions in their own names from their own personal assets, the account from which Arnold & Porter proposed to make contributions was "inaccessible to individual partners and cannot be used for their personal expenses" and funds "paid from such an account must be characterized as Partnership assets." *Id.* at 2. As a government contractor, Arnold & Porter could not make any political contributions. But importantly, the opinion suggests that if the partners did have individual access to the proposed account and could use the account for personal expenses, then the plan would have been permissible (as in AO 1982-63).

Over twenty years later, in AO 2005-20, the Commission approved of a plan proposed by Pillsbury Winthrop Shaw Pittman LLP ("Pillsbury") whereby partners who received their compensation from Pillsbury's automated electronic payroll system could designate a portion of their compensation to be directed to Pillsbury's PAC. Key to the Commission's decision to approve Pillsbury's system was that the Pillsbury partners who used the electronic payroll

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system had "complete control over the funds" and could "modify or revoke these designations at any time prior to disbursement." Id. at 3. As this advisory opinion demonstrates, there are permissible ways for partners to use funds that are allocated to them by the partnership that result in political contributions made only by the individual partners.

In the case of the Respondents, as explained in our May 30, 2017 letter, contributions were made by individual equity partners on their own personal checks or personal credit cards. They then received draws from their capital accounts. The capital accounts consisted of their individual capital contribution and profit allocation, net of withdrawals. The parameters of the capital accounts were defined in the partnership agreement. Additionally, equity partners received draws for a variety of reasons, ranging from parking expenses to tuition payments. The equity partners' draws from their capital accounts thus reduced their individual capital accounts and did not constitute the reduction of partnership assets. The facts in this case show that the political contributions at issue here should be attributed only to the individual equity partner who made the contribution and not to the Thornton Law Firm.

H. Because the Thornton Law Firm Partners Had Access to Their Capital Accounts and any Draws Were Not Repayable by the Firm, Their Contributions Constitute Personal Contributions Under the Commission's "Nonrepayable Drawing Account" Precedents

The Commission has a variety of precedents regarding the use of so-called "nonrepayable drawing accounts," which are accounts that are maintained by an employer (or an employer-like entity) but are accessible by an individual and are not replenished by the employer when they are drawn down (i.e., they are "nonrepayable" by the employer). In several instances, the Commission has issued advisory opinions finding that individuals are permitted to make political contributions through such corporate nonrepayable drawing accounts. See, e.g., AO 1979-19 at 2 (distinguishing between individual versus corporate contributions and finding that "[c]ombined political contributions and payments to [the National Cattleman's Association] drawn on a corporate account which is a nonrepayable drawing account of an individual NCA member are not considered prohibited corporate contributions . . . "); AO 1981-4 at 2 ("[I]f any individual member of the [National Society of Professional Engineers] conducts his or her business as a corporation, then the combined dues payment and political contribution from that member must be drawn on an individual account or on a non-repayable drawing account which the individual maintains with the corporation."); AO 1982-11 (finding same). Implicit in these opinions is the concept that the use of funds to which an individual has access and can use for a personal purpose, even if the funds are maintained by an employer-like entity, constitute personal contributions only and will not be attributed to the parent entity. Here, the Thornton Law Firm equity partners had access to their individual capital accounts for a variety of expenses, and any draws taken from the accounts for their personal expenses were not repaid by the Firm.<sup>2</sup> Thus, equity partners' use of such accounts was materially indistinguishable from

<sup>&</sup>lt;sup>2</sup> The Respondents submit that this principle still applies to any instance where a partner's capital account was negative, because if such account was negative, the partnership did not simply walk away from the negative draw

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the nonrepayable drawing accounts sanctioned by the Commission for years.<sup>3</sup> As such, their political contributions should be attributed to them only.<sup>4</sup>

## III. Meeting Request

The Respondents request a meeting with the Commission staff member assigned to review this case in order to supplement the responses even further before the matter goes to the Commission. The Respondents propose that their retained experts, Carl Jenkins and Scott Thomas, also participate in the meeting. The Respondents request that the meeting take place before any action is taken. We would appreciate hearing from your Office as to what a convenient time for the meeting may be. We look forward to your response, and I remain available to answer any questions that you may have.

Sincerely,

Brian T. Kelly

or "repay" the negative account; rather, the negative draw was a legally enforceable loan, per the partnership agreement.

The Respondents note that they have conferred with former FEC Commissioner Scott Thomas, now a partner at Blank Rome LLP, who concurs with the above analysis.

The Respondents are aware of AO 1997-9, which permitted individual member traders to use personal trading accounts that could be used for other third-party payments in addition to the monthly fees owed to the Chicago Board of Trade ("CBOT"), to make contributions to CBOT's separate PAC. To the extent that the Commission conditioned the proposed contribution plan in AO 1997-9 upon member traders having positive margin in their accounts, the Respondents respectfully submit that the facts and circumstances of the Thornton Law Firm's equity partners' capital accounts are materially distinguishable from the facts in CBOT, particularly in light of the margin requirements that may be imposed by the CBOT that dictate minimum capital required for traders and the fluctuating cash flow that partnerships face as well as the Thornton Law Firm's treatment of negative capital accounts as legally enforceable loans to the partners involved per their partnership agreement.